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Note

Private Threats, Public Stigma? Avoiding False Dichotomies in the Application of Megan’s Law to the Juvenile Justice System

Michael L. Skoglund*

When Mary was eleven years-old, she sexually abused a four-year-old boy.1 She admitted committing acts that would constitute second-degree criminal sexual conduct,2 and was adjudicated delinquent by a Minnesota juvenile court.3 When

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1. Mary is a hypothetical character based on the petitioner in In re Welfare of C.D.N., 559 N.W.2d 431, 435 (Minn. Ct. App. 1997) (upholding the application of Minnesota’s sex offender registration statute to juveniles).

2. Second-degree criminal sexual conduct is an offense in Minnesota’s adult criminal justice system. See Minn. Stat. § 609.343 subd. 1(a) (1998). It is defined as sexual contact between a complainant who is under thirteen and an actor who is at least three years older. See id. For individuals tried in the adult system, this offense is a felony. See id. § 609.343 subd. 2 (prescribing felony-level penalties for second-degree criminal sexual conduct). See generally Minn. Stat. § 609.03 subd. 1 (1998) (providing punishment for felony offenders).

3. In re Welfare of C.D.N., 559 N.W.2d at 435. Minnesota juvenile courts have significant discretion in selecting dispositions for the rehabilitation of delinquent children. See Minn. Stat. § 260B.198 subd. 1 (1998). Mary could receive a remedy as lenient as informal counseling from the bench, see id. § 260.185 subd. 1(a), but it is more likely that she will be committed to a secured facility operated by the commissioner of corrections. See generally id. § 260.185 subd. 1(c) (describing criteria judges should use in making the determination, inter alia the child’s welfare and risk to the public). As a juvenile sex offender, Mary must receive treatment “structured to address both [her] therapeutic and disciplinary needs.” Minn. Stat. § 242.195 subd. 1(b) (1998). Yet, this ostensive commitment to rehabilitation is undermined by the statutory requirement that dispositions to secure facilities must be determinate rather than indeterminate. See Minn. R. Juv. Ct. Proc. Rule 15.05 subd. 3 (1998). The system can impose post-confinement probation or treatment until she turns 18, see Minn. Stat. § 260B.101 subd. 1 (Supp. 1999), but Mary will
Nathan was twelve, he and a friend sexually assaulted a teenage girl.\(^4\) A New York juvenile court judge found that Nathan committed acts that would constitute second-degree sexual abuse,\(^5\) and adjudicated him delinquent.\(^6\)

Both Minnesota and New York have enacted Megan's Law statutes,\(^7\) but the application of these laws to Mary and Nathan illustrates the uncomfortable fit between the rehabilitative ideal underlying the juvenile justice system, and new punitive legislative responses to sex offenders. Because the two states share a commitment to rehabilitating juvenile sex offenders, both Mary and Nathan should receive treatment designed to correct their behavior and mold them into productive members

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\(^4\) Nathan is a hypothetical character based loosely on the petitioner in *In re Brian B.*, 598 N.Y.S.2d 30, 31 (App. Div. 1993) (upholding the application of adult sexual abuse statutes as the legal standard for children in juvenile court cases).

\(^5\) In New York, second-degree sexual abuse is defined as sexual contact with a complainant who is under fourteen years of age. See N.Y. PENAL LAW § 130.60 (McKinney 1998). Surprisingly, the state does not categorize this conduct as felonious, see id., so the court was not obligated to commit Nathan to a secured facility, although it was within its discretion to do so. See infra note 6.

\(^6\) See supra note 4. New York law accords juvenile courts discretion in creating dispositions following an adjudication of delinquency. See N.Y. FAM. CT. ACT § 352.2 (McKinney 1998 and Supp. 1999-2000). Courts are charged with the duty to balance "the needs and best interests of the [child] as well as the need for protection of the community," and must select the least restrictive dispositions for non-felony convictions. Id. § 352.2(2) (McKinney Supp. 1999-2000). Given this discretion, a judge could place Nathan with a relative; however, it is more likely that the judge would consider the violent nature of Nathan's crime and commit him to a secure facility. See N.Y. FAM. CT. ACT § 353.3(3) (McKinney 1998). Since New York, like Minnesota, uses determinate sentencing, the maximum length of Nathan's confinement will be limited by statute rather than by his response to treatment. See id. § 353.3(5). If Nathan is placed in a secured facility, he must be released within eighteen months, regardless of the status of his rehabilitation, even if there are post-confinement treatment programs available. See id.

\(^7\) See MINN. STAT. § 243.166 (1998 and Supp. 1999); MINN. STAT. § 244.052 (1998 and Supp. 1999); N.Y. CORRECT. LAW §§ 168-a to 168-v (McKinney Supp. 1999-2000). Megan's Law is the popular term for statutes which require released sex offenders to register their presence with law enforcement and regulate public dissemination of information about those offenders. See infra notes 60-70 and accompanying text (describing the nomenclature, scope, and application of registration and community notification statutes).
of society. Yet, upon completion of their treatment, these children may receive very different homecomings.

Although Mary's adjudication in Minnesota will be rehabilitative, that is, founded on specialized treatment designed to correct her antisocial behavior, her release will trigger an evaluation of her recidivism risk, she will be required to register with the police, and her community may be notified of the pubescent threat in its midst. Officials in the juvenile justice

8. See MINN. STAT. § 242.18 (1998) (requiring the Commissioner of Corrections to study children entrusted to the juvenile courts, and “investigate all of the pertinent circumstances of the person’s life and the antecedents of the crime or other delinquent conduct because of which the person has been committed to the commissioner, and thereupon order the treatment the commissioner determines to be most conducive to rehabilitation.”); N.Y. CORRECT. LAW § 45 subd. 6-b (McKinney Supp. 1999-2000) (requiring the State Commission of Correction to “[p]romulgate rules and regulations, in consultation with the division for youth, establishing minimum standards for the care, custody, rehabilitation, treatment, supervision, discipline and other programs for correctional facilities operated by the division for youth”).

9. The Minnesota Commissioner of Corrections is required to provide a range of sex offender treatment programs for juveniles within secured and residential facilities. See MINN. STAT. § 242.195 subd. 1 (1998); see also supra note 3.

10. Before being released, Mary will be evaluated by an “end-of-confinement review committee,” MINN. STAT. § 244.052 subd. 3(a) (Supp. 1999), that will assess the risk she poses to the public based on the seriousness of her offense, see id. § 244.052 subd. 3(g)(1); her prior history of offenses, see id. § 244.052 subd. 3(g)(2); her characteristics, including response to treatment and history of substance abuse, see id. § 244.052 subd. 3(g)(3); and the availability of community services, including treatment, familial support, and employment opportunities, and credible evidence indicating that she will re-offend, see id. § 244.052 subd. 3(g)(4)-(5). Based on the review committee's evaluation, Mary will be assigned a risk level: if the assessment indicates a low risk of reoffense, she will be deemed a Level I offender; if she is considered a medium risk, she will be deemed Level II; if she is considered a high risk, she will be labeled a Level III offender. See id. § 244.052 subd. 2 (1998); id. § 244.052 subd. 3(e) (Supp. 1999).

11. The construction of the Minnesota sex offender registration statute specifically encompasses juvenile delinquency adjudications, and guides the application of the statute to juvenile offenders. See MINN. STAT. § 243.166 subd. 1 (Supp. 1999). The legislature required registration of people both convicted of, and adjudicated delinquent under, the criminal sexual conduct statutes. See id. The statute also requires juvenile courts to inform juveniles of their duty to register under the statute. See id. § 243.166 subd. 2.

12. The Minnesota community notification statute requires law enforcement agencies where sex offenders will work or reside to disclose information to the public based on the offenders’ risk levels, see supra note 10, the threat they pose to the public, see supra note 10, in addition to the community's need “for information to enhance their individual and collective safety.” MINN. STAT. § 244.052 subd. 4 (Supp. 1998). If Mary is labeled a Level I offender, the information collected about her will be provided only to law enforcement agen-
system may be convinced of Mary's rehabilitation, but the committee that construes and applies the registration and notification statutes can reach a different conclusion, and significantly alter her reintegration into her community.\textsuperscript{13} Her juvenile court record can be publicized\textsuperscript{14} and her adolescence stigmatized\textsuperscript{15} by an agent of the adult system, which imposes adult tests and adult consequences on young offenders.

In New York, however, in spite of Nathan's sexually violent tendencies the state will release him into his community without notifying community members of his commission of a sex crime.\textsuperscript{16} Like Mary, Nathan's release from the secured facility will be a function of the length of his determinate sentence rather than the completion of his rehabilitation; his confinement will end regardless of whether he has improved or regressed.\textsuperscript{17} He will reenter the population he once victimized as an unremarkable teenager, moving among potential victims, and the victims and witnesses of her crime. \textit{See id.} § 244.052 subd. 4(b)(1). If she is assessed to be a Level II offender, the information will be provided to groups she is likely to encounter: "the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. . . . [and] individuals the agency believes are likely to be victimized by the offender." \textit{Id.} § 244.052 subd. 4(b)(2). If the committee deems Mary to be a Level III offender, her presence and background may be disclosed "to other members of the community whom the offender is likely to encounter." \textit{Id.} § 244.052 subd. 4(b)(3).

\textsuperscript{13} The Minnesota end-of-confinement review committee is not an agent of the juvenile court system. \textit{See} \textsc{Minn. Stat.} § 244.052 subd. 3. The committee can consider juvenile court records, but it ultimately performs an independent risk assessment based on a broad spectrum of criteria. \textit{See supra} note 10.

\textsuperscript{14} There is a presumption in the juvenile justice system that records of proceedings and dispositions will be confidential. \textit{See infra} notes 37-38 and accompanying text.

\textsuperscript{15} The rehabilitative goal of the juvenile justice system is ostensibly incompatible with the punitive and stigmatizing aspects of the adult model. \textit{See infra} notes 37-38 and accompanying text.

\textsuperscript{16} Adults convicted of second-degree sexual abuse are considered sexual predators for the purposes of New York's Sex Offender Registration Act. \textit{See} \textsc{N.Y. Correct. Law} § 168-a (Mckinney Supp. 1999-2000). Because Nathan was adjudicated delinquent rather than convicted of a criminal offense, \textit{see supra} note 6 and accompanying text, he is outside the scope of the registration statute. \textit{See} \textsc{N.Y. Crim. Proc.} § 720.35(1) (Mckinney 1995) ("A youthful offender adjudication is not a judgment of conviction for a crime or any other offense . . . ."). \textit{See generally} \textsc{N.Y. Correct. Law} § 168-a (making a "conviction" the basis of a "sexual offender" designation).

\textsuperscript{17} \textit{See supra} note 6.
without arousing suspicion. 18 Nathan's neighbors and classmates may not learn about his past until he has committed another violent sex crime. 19

Ultimately, the fate of juvenile sex offenders like Mary and Nathan may not be a function of rehabilitative goals or public safety concerns. Instead, poorly conceived statutory systems may privilege one goal over the other without providing adequate means of accomplishing either. Unless legislators carefully design the nexus of these systems, states may discover that they have created patchwork legal processes that undermine both public policy goals of rehabilitation and public safety. At one extreme, states with determinate sentencing and no notification statutes may release unrehabilitated juveniles to reperpetrate in a legal vacuum; 20 at the other, states with notification statutes may improperly assess juveniles using adult criminal factors, and subject them to the stigma of community notification, undermining their rehabilitation. 21

Somewhere between the concern that the application of Megan's Law will hinder rehabilitation, and the fear that its absence will perpetuate criminal behavior among juveniles, it is possible to construct a policy that serves both important goals.

This Note will argue that the unique problems presented by juvenile sex offenders are not appropriately addressed by the application of conventional adult Megan's Law statutes to juvenile court dispositions. Rather, these laws should be shaped by the rehabilitative ideal, interpreted by agents of the juvenile court, and applied with the purpose of protecting all children. Part I explains the juvenile justice system, the challenges posed by juvenile sex offenders, and the evolution and nuances of Megan's Law. Part II argues that determinate sentencing and adult-oriented notification statutes are not proper

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18. It stands to reason that juvenile sex offenders pose a unique threat to public safety because interaction between them and other children is less remarkable than that between adults and children. Children also commit a disproportionately high proportion of sexual assaults with juvenile victims. See infra note 50 and accompanying text.

19. Nathan's name and offense will be shielded under law. N.Y. Soc. SERV. LAW § 372(3) (McKinney Supp. 1999-2000). State actors who are permitted to access this information, such as social workers and foster parents, see id., may be charged with a misdemeanor if they reveal "client-identifiable information," id. § 372(4)(b)(ii).

20. Nathan may be on probation or in a rehabilitative program, but no other members of the community, including law enforcement officials, will be notified of his sex offenses. See supra note 16.

21. See supra notes 14-15 and accompanying text.
means of serving the state's interest in rehabilitating youthful offenders and protecting potential victims. This Note concludes that concerns about the efficacy of the juvenile justice system are not properly addressed by treating juvenile sex offenders like adults. Children should be treated until they are rehabilitated, assessed by agents of the juvenile justice system, and made subject to notification only according to the policy goals of the juvenile justice system.

I. THE HISTORICAL, POLITICAL, AND LEGAL NEXUS OF JUVENILE COURTS, JUVENILE SEX OFFENDERS, AND MEGAN'S LAW

A. THE JUVENILE JUSTICE SYSTEM

The juvenile justice system was created a century ago on the belief that children are different from adults and should be protected by the state. The juvenile court was philosophically founded on the "rehabilitative ideal," the theory that the state is parens patriae or the "common guardian of the community." This rehabilitative model was conceptualized amidst

22. This Note asserts that the rehabilitative ideal is, in fact, the ideal model for responding to juvenile offenders. Although the efficacy of different rehabilitative strategies is discussed, see infra note 56, examination of punitive or incapacitation models is both illogical, see infra note 87 and accompanying text, and outside the scope of this Note.


24. See id. at 1093-96. Ainsworth begins with the premise that, in medieval times, children were "fully integrated members of the community." Id. at 1093. She argues that contemporary American distinctions between adults and children, and the popularization of the notion of adolescence, were created around the turn of the last century. See id. at 1094-98. "By the turn of the century, the attributes of childhood were being applied to teenagers, who only a generation earlier would not have been distinguished from older adults." Id. at 1095 (footnote omitted).

25. See id. at 1096.

26. This term was originated by Francis A. Allen in his book, THE BORDERLAND OF CRIMINAL JUSTICE: ESSAYS IN LAW AND CRIMINOLOGY 26 (1964). Barry Feld describes the rehabilitative ideal as a legal philosophy that "emphasized open-ended, informal, and highly flexible policies so that the criminal justice professional had the discretion necessary to formulate individualized, case-by-case strategies for rehabilitating the deviant." Barry C. Feld, Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court, 69 MINN. L. REV. 141, 147 (1984).

27. Ex parte Crouse, 4 Whart. 9, 11 (Pa. 1839); see also Lanes v. Texas, 767 S.W.2d 789, 792 n.8 (Tex. Crim. App. 1989) (en banc) (defining the term as
an explosion of scientific progress in the early 1900s, and was influenced by the popular belief that juvenile criminal behavior could be treated scientifically.\(^{28}\) Progressives envisioned a civil\(^{29}\) entity capable of diagnosing symptoms of antisocial behavior, and prescribing individualized remedies for young offenders.\(^{30}\) Whereas adult criminal systems were implemented to punish misdeeds and discourage criminality, the juvenile justice system was intended to rehabilitate youthful offenders and to protect the public.\(^{31}\)

Implemented according to the rehabilitative ideal, juvenile court adjudications are unique because they address the child's need for treatment rather than his offense.\(^{32}\) Further, disposi-

\(^{28}\) Janet Ainsworth writes: “Juvenile misbehavior was seen as merely the overt manifestation of underlying social pathology. Like physical pathology, social pathology could not be ignored or the ‘disease’ might progressively worsen. With proper diagnosis and treatment, however, social pathology was considered as susceptible to cure as physical ailments.” Ainsworth, supra note 23, at 1097; see also Feld, supra note 26, at 162 (“[I]t was assumed that a rational, scientific analysis of facts would reveal the proper diagnosis and prescribe the cure.”); Julian W. Mack, The Juvenile Court, 23 HARv. L. REV. 104, 120 (1909) (“In hundreds of cases the discovery and remedy of defective eyesight or hearing or some slight surgical operation will effectuate a complete change in the character of the lad.”).

\(^{29}\) The civil-criminal distinction lies at the heart of the difference between the juvenile and criminal justice systems. Because the state is attempting to rehabilitate the child rather than punish an adult, procedural requirements are relaxed and additional discretion is granted. See, e.g., Feld, supra note 26, at 149 & n.25.

\(^{30}\) Anthony Platt describes the distinctions between the criminal and juvenile justice systems by pointing out that, in the latter system, a juvenile suspect “was not accused of a crime but offered assistance and guidance; intervention in his life was not supposed to carry the stigma of a criminal record; judicial hearings were conducted in relative privacy; proceedings were informal and due process safeguards were not applicable due to the court's civil jurisdiction.” ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 1137-38 (2d ed. 1977).

\(^{31}\) See, e.g., NATIONAL PROBATION AND PAROLE ASS'N, GUIDES FOR JUVENILE COURT JUDGES 69 (1957) [hereinafter NPPA GUIDES FOR JUVENILE COURT JUDGES] (dictating that “[t]he basic goals of the juvenile court are the protection of the community, the rehabilitation of the delinquent child and the protection of the neglected (or dependent) child”). The guidelines further state that “the threat to the peace and security of the community remains unless the underlying causes of the problem are treated and eliminated.” Id.

\(^{32}\) Barry Feld argues that the “jurisprudence rejected blameworthiness and deserved punishment for past offenses in favor of a utilitarian strategy of future-oriented social welfare dispositions. In theory, judges decided why the child appeared in court and what the court could do to change the character, attitude, and behavior of the youth . . . .” BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 70 (1999).
Indeterminate sentences are intended to be indeterminate, nonproportional, and carefully implemented to nurture the juvenile's progress. Indeterminate sentences are a function of the offender's response to treatment and as a result, vary in length. Unlike sentences based on statutory guidelines, as in the criminal system, indeterminate dispositions in the juvenile system are limited only by the child's amenability to treatment and the jurisdiction of the juvenile court. Indeterminate juvenile court dispositions are also nonproportional because they are unrelated to the nature of the child's particular offense. Because juvenile court dispositions are intended to bring at-risk youth within societal

33. See infra notes 34-38 and accompanying text.

34. Although adults are sentenced to a particular period of time, the juvenile justice system was founded on the belief that "arbitrary time limits cannot be set down as gauges for achieving certain changes in behavior." NPPA GUIDES FOR JUVENILE COURT JUDGES, supra note 31, at 74. Indeterminate sentences are permissible because they are civil rather than criminal, see supra note 29 and accompanying text, and rehabilitative rather than punitive. See, e.g., In re Eric J., 601 P.2d 549, 554 (Cal. 1979) (holding that "juvenile court law continues to provide indeterminate terms, with provision for parole as soon as appropriate"); Smith v. State, 444 S.W.2d 941, 945, 947-48 (Tex. Ct. App. 1969) (upholding the constitutionality of indeterminate sentencing as applied to minors). Judicial discretion may be limited, however, by statutory guidelines. See, e.g., MINN. STAT. § 260.185 (1998 & Supp. 2000) (enumerating dispositions); MINN. R. JUV. CT. PROC. Rule 12.8.315 (1997) (stating guidelines for courts to employ in juvenile proceedings); In re G.D.E., 313 N.W.2d 388, 389 (Minn. 1981) (holding that a juvenile court lacked the authority to dispose indeterminate sentences in the face of statutory limitations to the contrary). Minnesota courts, for example, usually require dispositions to be narrowly tailored and respectful of familial bonds. See In re J.A.J., 545 N.W.2d 412, 415 (Minn. Ct. App. 1996) (holding that the trial court should have considered alternatives short of residential sex offender treatment); In re L.K.W., 372 N.W.2d 392, 398 (Minn. Ct. App. 1985) (holding that "the court must take the least drastic step" to effectuate the "purpose of restoring law-abiding conduct" in juveniles).

35. States can limit the jurisdiction of their juvenile courts according to factors such as age and offense. Barry Feld writes that "if states define juvenile court jurisdiction to include only those persons below a jurisdictional age and whom prosecutors charge with a nonexcluded offense, then, by statutory definition, all others are adults for purposes of criminal law." FELD, supranote 32, at 219. For instance, even though Minnesota's juvenile justice system generally has jurisdiction over minors until they turn eighteen, see MINN. STAT. ANN. § 260B.101 (West Supp. 2000), serious offenders can be waived into the adult system, see infra note 42 and accompanying text, or treated within the juvenile system until they turn 21. See MINN. STAT. ANN. § 260B.130 (West Supp. 2000).

36. See FELD, supra note 32, at 70 (asserting that "nonproportional meant that no relationship existed between what the child allegedly did and the length of disposition; the trivial or serious nature of the offense imposed no limits in advance").
norms, the juvenile system was designed to guarantee confidentiality and avoid unnecessary stigmatization through use of adult criminal labels and sanctions.

The actual implementation of the juvenile justice system as a rehabilitative model, however, has been questioned by the Supreme Court, theorists, practitioners, and members of the public. The Supreme Court has extended many elements of criminal procedure to juvenile dispositions. In dicta, the Court has been skeptical of adversarial and punitive elements adopted by state juvenile justice systems that never incorporated due process guarantees for juvenile offenders. Mean-

37. See Platt, supra note 30, at 137 (noting that juvenile records and hearings were kept private); John C. Watkins Jr., The Juvenile Justice Century: A Sociolegal Commentary on American Juvenile Courts 122-26 (1988) (describing the history and rationale for confidentiality in juvenile proceedings). In modern applications of the juvenile justice system, confidentiality tends to fray in proportion with the offender's age. See Minn. Stat. Ann. § 260.155 (West 1998 & Supp. 2000) (allowing public access to felony proceedings for children sixteen and older); see also infra note 42 (discussing how some offenders and classes of offenders can be waived out of the juvenile system entirely, and made subject to the norms of the adult criminal justice system).

38. See Platt, supra note 30, at 137 (noting that judicial "intervention" in the lives of juveniles "was not supposed to carry the stigma of a criminal record"); Barry C. Feld, The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes, 68 B.U. L. Rev. 821, 823-25 (1988) (describing the changing focus of some courts from the juvenile offender to the nature of their conduct).


40. For example, in Breed v. Jones the Court stated that:

although the juvenile court system had its genesis in the desire to provide a distinctive procedure and setting to deal with the problems of youth . . . our decisions in recent years have recognized that there is a gap between the originally benign conception of the system and its realities.

421 U.S. at 528; see also Haley, 332 U.S. at 601 (declining to indulge the as-
while, the public has begun to view young offenders as crack-selling, gun-toting city kids rather than as malleable lads and lasses. Politicians have responded to this public sentiment by allowing certain young offenders, and classes thereof, to be waived into the adult criminal justice system. Yet, amidst criticisms of the system from retributionists who believe it to be too lenient, and progressives who believe it to be too severe, the Supreme Court has been reluctant to require any wholesale changes: "If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it." At the centennial anniversary of the juvenile court, its future is torn between the rehabilitative ideal upon which it was founded, the retributive instincts that drive politicians and factions of the public, and assumptions that "a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice"; McKeiver, 403 U.S. at 543-44 (noting that "the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized").

41. Barry Feld writes, "public and political fears of social disorder, of the young, and of urban blacks exacerbated the crisis of law and order, provided fuel for advocates of repression, and led conservative critics to denounce juvenile courts for coddling young criminals." Feld, supra note 32, at 11.


43. McKeiver, 403 U.S. at 551.

44. See supra note 23 and accompanying text.

45. The current status of different states' juvenile justice systems is neatly summarized in a recent publication by the Department of Justice. See Office of Juvenile Justice & Delinquency Prevention, Juvenile
the ever-growing need to cope with juveniles who perpetrate and reperpetrate sexual assaults against their peers.

B. THE JUVENILE SEX OFFENDER

Either unanticipated or unmentioned by the progressives who created the juvenile justice system, the juvenile sex offender poses unique challenges to juvenile courts. Not only are youth a significant proportion of the sex offender population, but the effects of their behavior are long-lasting and arguably perpetuate the cycle of abuse.

The United States Department of Justice reports that juveniles commit between thirty and fifty percent of reported cases of child sexual abuse, and approximately sixteen percent of reported rapes each year. These statistics are significant because juveniles comprise a relatively small percentage of the population. Because children commit a disproportionately high percentage of sexual offenses, and the jurisdiction of the juvenile system is generally limited to their eighteenth birthdays, their rehabilitation presents unique public policy challenges because the system has a finite period of time to assess and treat these young offenders.


46. See infra notes 48-50 and accompanying text.
47. See infra notes 53-59 and accompanying text.
48. See Earl F. Martin & Marsha Kline Pruett, The Juvenile Sex Offender and the Juvenile Justice System, 35 AM. CRIM. L. REV. 279, 287 (1998) (stating that "approximately 20% of all rapes and between 30% and 50% of all child molestations are perpetrated by adolescent males" (citations omitted)).
50. The United States Census Bureau estimated the U.S. population at 273,866,000 people in November 1999; it also estimated that slightly less than sixty-million people were between five and nineteen years-old. See U.S. CENSUS BUREAU, RESIDENT POPULATION ESTIMATES OF THE UNITED STATES BY AGE AND SEX: APRIL 1, 1990 TO NOVEMBER 1, 1999 (released Dec. 23, 1999) available at <http://www.census.gov/population/estimates/nation/intfile2-1.txt>. Even if one accepts the premise that the entire population of juveniles is capable of committing rape (which is impossible), the statistics indicate that juveniles commit a disproportionate rate of sexual abuse, and at least a proportionate rate of rapes.
51. See supra note 35 and accompanying text.
52. This is true, if for no other reason than because, if unrehabilitated, these juveniles will pose a threat to society for decades to come. See generally
Sexual abuse by minors is also significant because it often imposes psychological and social effects on its victims. People who are abused during childhood are more likely to be arrested later in life. Studies have also demonstrated that convicted criminals with a history of physical or sexual abuse are more likely than other inmates to victimize children. A National Institute of Justice study on the effects of child victimization showed that at some point after being abused, nearly 30% of sexual assault victims developed posttraumatic stress disorder. Studies indicate that aberrant sexual conduct can be treated and treatment strategies are improving. Yet, the

infra notes 53-54 and accompanying text. The high rate of juvenile offenders also begs the sociological question (which is outside the scope of this Note) of whether juveniles have always comprised a disproportionate rate of offenders, or whether modern America's socialization of children is becoming increasingly dysfunctional.

53. See Cathy Spatz Widom, National Inst. of Justice Research in Brief, Victims of Childhood Sexual Abuse—Later Criminal Consequences 4 (1995), available at <http://www.ncjrs.org/pdffiles/abuse.pdf>. While only 16.8% of people without a history of abuse are arrested at some point in their lives, 26% of people who have been abused or neglected are arrested. See id. Although people with a history of sexual abuse are no more likely to be arrested than those who are physically abused or neglected, they are more likely to be arrested for committing sex crimes. See id. at 5-6.

54. See Melissa Sickmund et al., Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: 1997 Update on Violence 5 (1997), available at <http://www.ncjrs.org/pdffiles/juvoff.pdf>. Nearly one-half of violent offenders who reported a history of sexual abuse had victimized children, compared with almost one-third of those with a history of physical abuse, and only 16% of those with no such history of abuse. See id. A second survey revealed that inmates who had abused children were twice as likely to have been physically or sexually abused than their peers who chose adult victims. See Lawrence A. Greenfield, Bureau of Justice Statistics, Child Victimizers: Violent Offenders and Their Victims 7 (1996), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cvvoatv.pdf>. While 22% of the violent inmates who abused children reported that they had been sexually abused, less than 6% of inmates with adult victims reported similar experiences. See id.


56. The authors of Practice Parameters point to evidence suggesting that sexual abusive behavior is a consequence of emotional, developmental, and behavioral disorders, and argue that successful intervention "requires an integrated, multimodal treatment program which is tailored to the individual's
clinical presentation and family support system.” See Practice Parameters for the Assessment and Treatment of Children and Adolescents Who Are Sexually Abusive of Others, J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, Dec. 1999, at 67S [hereinafter Practice Parameters]. Martin and Pruett performed a meta-analysis of publications on the efficacies of different treatment strategies, and suggested that a combination of treatment strategies may be more efficient than relying on only one system. See Martin & Pruett, supra note 48, at 312 (citations omitted). In their discussion of treatment strategies, the Practice Parameters authors cite three general treatment strategies: cognitive-behavioral, psychosocial, and psychopharmacological. See Practice Parameters, supra, at 69S-70S.

First, cognitive-behavioral interventions provide offenders with information about, and coping strategies for, their disorders. See id. at 69S-70S. Rothchild, in his article, cites such a program, which teach juveniles to associate “masturbatory satiation” with “proper sexual cues,” while associating illicit tendencies with arrest and embarrassment. See Sander N. Rothchild, Note and Comment, Beyond Incarceration: Juvenile Sex Offender Treatment Programs Offer Youths a Second Chance, 4 J.L. & POL’Y 719, 749-50 (1995).

Second are psychosocial interventions, including different individual, group, family, and community-based therapy structures. See Practice Parameters, supra, at 70S-71S. The authors indicate that these models allow the system to treat different aspects of the youthful offender's problems: for instance, group therapy confronts the youth with peers “who are not easily manipulated, and who are able to confront the attempts at minimalization and denial.” Id. at 70S. Individual therapy builds the rapport between child and clinician. See id. at 70S. Family therapy, meanwhile, rebuilds the offender's support system at home. See id.

The third group consists of psychopharmacological interventions, which work either by addressing compulsive behavior or by lowering testosterone levels. See id. at 71S-72S. The authors acknowledge, however, that there are ethical considerations because of side effects and the fact that the Food and Drug Administration has yet to approve the use of antiandrogen drugs to lower hormone levels in sex offenders. See id. at 72S. Unless medication can cure rather than merely treat aberrant sexual behavior, agents of the juvenile justice system will need to carefully consider whether the benefit to public safety outweighs the potential costs to children.

57. The authors of Practice Parameters cite studies indicating that recidivism rates for adolescent sex offenders in treatment programs ranges from 5% to 15%, as opposed to 7% to 40% for offenders who are untreated. See Practice Parameters, supra note 56, at 68S. They cite four reasons why juvenile offenders may be more susceptible to treatment than adults: first, their pattern of sexual offending is less deeply ingrained; second, they are still exploring different paths to sexual gratification; third, their core masturbatory fantasies are still evolving; and fourth, they may still learn reasonable social skills. See id. at 68S-69S. Martin and Pruett acknowledge that it is too soon to make sweeping conclusions about new methods of treatment, but argue that “[s]ufficient strides have been made to suggest that ‘modern treatments, which have changed and improved significantly in the past fifteen years, have a significant impact on the recidivism rates for many offenders.” Martin & Pruett, supra note 48, at 310 (quoting Judith V. Becker, Offenders: Characteristics and Treatment, 4 SEXUAL ABUSE OF CHILDREN 181, 185 (1994)); see also Rothchild, supra note 56, at 746-56 (describing “[t]he remarkable success of treatment programs”). Rothchild argues that the efficacy of modern treatments for
primary effects of sexual assault and molestation are followed by secondary effects that perpetuate the cycles of abuse. As a contagion phenomenon that targets children, and reproduces itself in generation after generation, sexual crime by and against children has increasingly attracted the attention of legislators.

C. MEGAN'S LAW

"Megan's Law" is the popular nomenclature for two related types of laws: sex offender registration statutes and com-

sex offenders makes them preferable to dispositions based on retribution. See id. at 758.

58. Surveys indicate that 19-81% of juvenile sex offenders were survivors of sexual abuse. See Raymond A. Knight & Robert A. Prentky, Exploring Characteristics for Classifying Juvenile Sex Offenders, in THE JUVENILE SEX OFFENDER 49 (Howard E. Barbaree et al. eds., 1993). Martin and Pruett also argue that, because of the unique and cyclical nature of sexual offenses, they pose a significant rehabilitative challenge:

Perhaps the most widely reported shared experience among young sex offenders is a history of sexual victimization. This form of victimization may perpetuate what is commonly known as the cycle of abuse; i.e., ... victims of sexual abuse often re-create their experiences ... with themselves as the perpetrators.

Martin & Pruett, supra note 48, at 298-99 (citations omitted). Martin and Pruett point to studies which show that nearly half of sex offenders had "acquired their deviant interests" before reaching the age of eighteen. Id. at 285-87. The prevalence of sexual offenses committed by juveniles, see supra notes 48-50 and accompanying text, and the likelihood of reperpetration by juvenile victims, see supra note 53, support the state's interest in addressing this issue.

59. Sexual abuse is so frightening and pernicious because its commission can lead to further commissions. See supra note 58. Like a meme, or a social virus, such abuse is transmittable from victim to victim to victim. Cf. Barry C. Feld, Juvenile Justice Lecture (Sept. 27, 1999) (describing drug abuse as a "contagion phenomenon").

60. The popular term for the body of sex offender registration and community notification laws named after Megan Kanka. When seven year-old Megan's family reported her missing, they could not have dreamed that the young man who lived across the street would, days later, confess to luring her into his home, strangling her, sexually assaulting her, killing her, and hiding her body. See Ralph Siegel, Suspect Admits Killing Girl, 7: Also Accused of Sexual Abuse, RECORD (N.J.), Aug. 2, 1994, ¶ 1-4, available in 1994 WL 7768092. The public later discovered that Megan's attacker had once pled guilty to attempted sexual assault and aggravated assault for a 1981 attack in which he dragged a seven year-old girl into a wooded area and began choking her. See Sex Offender Charged in Girl's Strangulation: 7-Year-Old's Body Found After Massive Search, RECORD (N.J.), Aug. 1, 1994, ¶ 13-15, available in 1994 WL 7771183. Within days of her attacker's confession, Megan's parents called for the enactment of a statute requiring neighborhoods to be notified when convicted sex offenders are released into their midst. See Siegel, supra, ¶ 13-15. As early as August 2—four days after Megan's death—news-
munity notification statutes. Although these statutes have only been in existence since the state of Washington enacted the prototype in 1990, public and federal concern about sex offenders increased exponentially after the New Jersey enactment in 1994. Registration statutes require released sex offenders to register their presence in a community with local law enforcement agencies. Community notification statutes require those law enforcement agencies to notify their communities about the presence and criminal history of certain sex offenders. Although every state has enacted some form of Megan’s Law, the statutes differ widely in their application to juvenile offenders. Nineteen states, including both Minnesota and New York, have enacted community notification stat-

papers reported that her father “endorse[d] the idea for legislation already nicknamed the ‘Megan law’ requiring neighborhood notification when sex offenders move to a community.” Id. ¶ 14.

61. See, e.g., Patricia L. Petrucelli, Comment, Megan’s Law: Branding the Sex Offender or Benefiting the Community?, 5 SETON HALL CONST. L.J. 1127, 1129 & n.10 (1995). The Washington statute was enacted as part of the Community Protection Act of 1990. See Community Protection Act, ch. 3, 1990 Wash. Laws 12. Enacted in the wake of a series of vicious attacks by released sex offenders, the legislature founded the enactment on its determination that “sex offenders . . . pose a high risk of reoffense, and that law enforcement’s efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies.” Id. § 401, 1990 Wash. Laws 12, 49.


64. See infra notes 75-77 and accompanying text.

65. See infra notes 78-81 and accompanying text.

66. See MINN. STAT. § 244.052 (Supp. 1999). As discussed above, Minnesota’s notification statute creates a process for qualifying risk, and notifying aspects of the community according to that risk. See supra notes 10, 12.

67. The New York statute is similar to Minnesota’s in that it establishes a “board of examiners of sex offenders,” N.Y. CORRECT. LAW § 168-l(1) (McKinney Supp. 1999-2000), which evaluates sex offenders before they are released from custody. See id. § 168-l(6). The board ultimately recommends whether the offender will be deemed a sexually violent predator, and therefore subject to community notification. See id. Like the Minnesota statute, see supra
Seventeen of the fifty-one registration laws,\(^6\) and ten of the nineteen notification statutes,\(^7\) apply to juveniles. Many of

notes 10-12, the New York statute creates three classifications of offenders, with corresponding levels of community notification. See N.Y. CORRECT. LAW § 168-1(6). For offenders with a low risk of recidivism, only law enforcement agencies in the criminal's jurisdiction are notified. See id. § 168-1(6)(a). For those with a medium risk, law enforcement agencies in the offender's jurisdiction will be notified and authorized to disclose information about the offender's presence and history "to any entity with vulnerable populations related to the nature of the offense." Id. § 168-1(6)(b). This effectively ends the offender's confidentiality, because the statute allows "[a]ny entity receiving information on a sex offender [to] disclose or further disseminate such information at their discretion." Id. Finally, if the risk to public safety is high, the information shall be made available to law enforcement agencies, entities with vulnerable populations, and to the public at large through a subdirectory of sexual predators. See id. § 168-1(6)(c). The contents of the New York subdirectory are available by a 900 telephone service, see N.Y. CORRECT. LAW § 168-p (McKinney Supp. 1999-2000), and a physical directory distributed to towns and villages. See N.Y. CORRECT. LAW § 168-q (McKinney Supp. 1998-2000).


70. In addition to Minnesota, see MINN. STAT. § 244.052 (1999), the following states apply community notification statutes to juveniles: CAL. PENAL CODE § 290(m)-(n) (West 1999); COLO. REV. STAT. ANN. § 18-3-412.5(6.5) (West 1999); IND. CODE ANN. § 5-2-12-11 (Michie Supp. 1997); IOWA CODE ANN. § 692A.13 (West Supp. 1997); MISS. CODE ANN. § 45-33-17 (Supp. 1999); N.J. STAT. ANN. §§ 2C:7-1 to -11 (West 1995); OR. REV. STAT. § 181.589 (Supp. 1998); TEX. CRIM. P. CODE ANN. §§ 62.01-.12 (West Supp. 2000); WASH. REV.
these statutes were originally challenged or criticized as being in violation of the ex post facto,71 double jeopardy,72 or due process73 clauses, but their constitutionality has generally been upheld.74

71. The United States Constitution flatly proscribes retroactive application of penal legislation. See U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . ex post facto Law . . . .”). The Supreme Court has referred to the Ex Post Facto Clause as a safeguard against the “risk that [a legislature] may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.” Landgraf v. USI Film Products, 511 U.S. 244, 266 (1994). However, courts have consistently held that since Megan’s Law statutes are not penal, they are therefore outside the scope of the Ex Post Facto Clause. See, e.g., Doe v. Pataki, 120 F.3d 1263, 1272-86 (2d Cir. 1997) (upholding both New York statutes against an ex post facto challenge).

72. See U.S. CONST. amend. V (“No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb . . . .”). Double jeopardy challenges, like ex post facto, tend to revolve around whether subsequent state action is actually punitive. See, e.g., United States v. Ursery, 518 U.S. 267, 270-71, 278-79, 287-88 (1996) (upholding civil forfeiture of assets subsequent to federal drug-crime convictions). Therefore, a Megan’s Law statute would violate the Double Jeopardy Clause if the notification or registration requirement constitutes a second punishment for a person who has just completed their original sentence. However, courts have held that these statutes are not punitive and, as a result, there is no double jeopardy violation. See, e.g., Pataki, 120 F.3d at 1274-85 (upholding New York’s Sex Offender Registration Act against a double jeopardy challenge).

73. See U.S. CONST. amend. V (“No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .”); U.S. CONST. amend. XIV, § 1 (“No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . .”). Some theorists have argued that the serious consequences of community notification demand more procedural precautions than the juvenile justice system usually allows. See, e.g., Mark J. Swearingen, Comment, Megan’s Law as Applied to Juveniles: Protecting Children at the Expense of Children?, 7 SETON HALL CONST. L.J. 525, 567 (1997) (explaining that “if this trend away from rehabilitative goals continues, due process requires that jury trials be afforded to all juvenile offenders, thus reversing the holding of McKeiver, but continuing to honor the principles for which it stands”). Courts have held that, with reasonable procedural safeguards, registration and notification statutes are constitutional. See, e.g., Doe v. Poritz, 662 A.2d 367, 417-22 (N.J. 1995) (recognizing the right to due process before community notification, but concluding that procedural safeguards are met by a pre-notification hearing).

74. Although earlier theorists questioned the constitutionality of this body of law, see, e.g., Swearingen, supra note 73, at 563-68 (arguing that Megan’s Law violates the due process and equal protection rights of juvenile sex offenders), courts have upheld the notable statutes created in Washington, see Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997), and New Jersey, see Doe v. Poritz, 662 A.2d 367, 422-23 (N.J. 1995) (as applied to adult offenders); New Jersey ex rel. B.G., 674 A.2d 178 (N.J. Super Ct. App. Div. 1996) (as applied to juveniles). But cf. Pau P. v. Farmer, 80 F. Supp. 2d 320, 325-26 (D.N.J. 2000) (holding that the rules promulgated for implementing the New Jersey statute
Registration statutes create databases for law enforcement to monitor individuals who have been convicted of identified violent and sexual offenses.\textsuperscript{75} Sex offenders are required to register with authorities upon release from confinement and whenever they change addresses for a statutorily created period of time.\textsuperscript{76} Since the contents of sex offender registries are ostensibly intended for law enforcement purposes, their use is restricted to state actors unless explicitly authorized by notification statutes.\textsuperscript{77}

Notification statutes serve as both gatekeepers to confidential information about released offenders and as catalysts for publication of information about potentially dangerous members of the community. Proponents of these statutes believe that community notification alerts potential victims and increases the awareness of law enforcement officers and other state actors.\textsuperscript{78} These laws may forbid public access to informa-


\textsuperscript{76}See, e.g., MINN. STAT. § 243.166 subds. 2, 3, 6 (respectively requiring initial registration, registration after change of address, and setting the duration of registration); N.Y. CORRECT. LAW § 168-c, -e, -f, -h (same).

\textsuperscript{77}See, e.g., MINN. STAT. § 243.166 subd. 7 (1998); N.Y. CORRECT. LAW § 168-l(6) (creating guidelines for disclosure of data on sex offenders); see also N.Y. CORRECT. LAW § 168-u (establishing penalties for unauthorized disclosure).

\textsuperscript{78}See, e.g., Chrisandrea L. Turner, Note, Convicted Sex Offenders v. Our Children: Whose Interests Deserve the Greater Protection?, 86 KY. L.J. 477, 503 (1998); supra note 61 (quoting Washington's rationale). The actual efficacy of these statutes has yet to be determined, however, because the statutes are relatively new and research has consequently been very limited. The state of Washington found that recidivist sex offenders subject to community notification statutes were arrested faster than comparable recidivists who were not subject to the statutes, but the level of re-offending for each group after 4.5 years was the same. See CENTER FOR SEX OFFENDER MANAGEMENT, AN OVERVIEW OF SEX OFFENDER COMMUNITY NOTIFICATION PRACTICES: POLICY IMPLICATIONS AND PROMISING APPROACHES 5 (1997). Since the statute did not affect the rate of re-offending, but did improve the speed of arrests, its effectiveness is ambiprobative. According to another study, the California regis-
tion about released offenders who are deemed to pose minimal risks to their communities, or they may require widespread notice to communities about the presence of high-risk offenders. Because these laws are founded on the belief that many sex offenders are likely to re-offend after release, it is necessary to apply the rehabilitative ideal to the treatment of juvenile sex offenders, and to question the application of registration and notification statutes to young sex offenders.

II. APPLYING MEGAN'S LAW ACCORDING TO THE REHABILITATIVE IDEAL

Although Megan's Law statutes may eventually further the goals of the juvenile justice system, two problems have plagued the implementation of the statutes to juvenile offenders. First, the statutes are restricted by determinate sentencing. Second, they are applied without adequate consideration of the rehabilitative ideal inherent in the juvenile justice system.

These application flaws are avoidable, however, if states consider the public policy goals of the juvenile justice system
when formulating responses to juvenile sex offenders.\textsuperscript{84} The proposed reforms offered in this Note will reduce the likelihood that rehabilitated children will be stigmatized, and increase opportunities for these youths to become safe and productive members of society. First, juvenile dispositions should be indeterminate and nonproportional so that young sex offenders have ample time to be treated before their release. Second, notification statutes should be applied and enforced by agents of the juvenile justice system who will use criteria relevant to young offenders, and consider the potentially damaging effects of community notification when deciding whether to release juvenile offenders. Consequently, Megan's law statutes should be utilized only in limited circumstances, and always according to the juvenile justice system's rehabilitative goals.

A. DETERMINATE SENTENCING UNDERMINES REHABILITATION AND AGGRAVATES THE NEED FOR COMMUNITY NOTIFICATION

Because determinate dispositions are not effective means of achieving rehabilitation, their imposition complicates the implementation of Megan's Law statutes. In an ideal world, every child treated by the juvenile justice system would be completely rehabilitated.\textsuperscript{85} There would be no need to notify communities about rehabilitated sex offenders or track their whereabouts. Yet, experience has demonstrated that treatment models, while improving, are not completely successful.\textsuperscript{86} The fact remains that most juvenile sex offenders will eventually be released before they have been rehabilitated.\textsuperscript{87} The crucial question is whether their confinement will end after an arbitrary number of years under determinate sentencing or after successful completion of treatment. Because public safety is increased by releasing children who are less likely to reperpe-

\textsuperscript{84} See NPPA GUIDES FOR JUVENILE COURT JUDGES, supra note 31, at 69.
\textsuperscript{85} See supra notes 26-31 and accompanying text.
\textsuperscript{86} Compare supra note 56 and accompanying text (describing improvements in treatment), with supra note 61 (describing the Washington legislature's frustration with recidivism).
\textsuperscript{87} Although it is possible for a state to waive all sex offenders into adult court, see generally supra note 42 and accompanying text, or enact civil commitment statutes that will indefinitely warehouse unrepentant and unrehabilitated sex offenders, see, e.g., MINN. STAT. § 253B.185 (1998 & Supp. 1999) (providing for "commitment of persons with sexual psychopathic personalities and sexually dangerous persons"), the sheer quantity of children who commit sexual offenses, see supra notes 48-50 and accompanying text, dictates that the vast majority of them will eventually be released.
trate, logic dictates that high-risk offenders should be treated indeterminately until they can be safely and successfully returned to their communities.\textsuperscript{88}

Although it appears reasonable to encourage systemic application of nonproportional\textsuperscript{89} indeterminate\textsuperscript{90} sentences to juveniles adjudicated delinquent for committing sex offenses, such dispositions must still be legal, feasible, and consistent with public policy. First, in order for indeterminate sentencing to be applied to juvenile sex offenders, it must be valid under both the Constitution and individual state statutes. There are no constitutional objections to this type of sentencing because it is inherently civil rather than criminal,\textsuperscript{91} and rehabilitative rather than punitive.\textsuperscript{92} While the Supreme Court has upheld the application of aspects of criminal procedure in juvenile court,\textsuperscript{93} it continues to support the rehabilitative ideal underlying the juvenile justice system.\textsuperscript{94} Since the purpose of im-

\begin{itemize}
\item \textsuperscript{88} In fact, many of the recent attempts to cope with adult sex offenders could be interpreted as attempts to make their sentences more indeterminate. Civil commitment statutes make confinement contingent on rehabilitation rather than the completion of a punitive sentence. See Kansas v. Hendricks, 521 U.S. 346, 356-71 (1997) (upholding civil commitment statute); In re Linnehan, 594 N.W.2d 867, 871-76 (Minn. 1999), cert. denied, Linehan v. Minnesota, 120 S. Ct. 587 (1999) (upholding the application of a rehabilitative civil commitment statute to adult sex offenders); \textit{infra} note 100 (describing Hendricks in greater detail).
\item \textsuperscript{89} See supra note 36 and accompanying text.
\item \textsuperscript{90} See supra note 34 and accompanying text.
\item \textsuperscript{91} See supra notes 29-31 and accompanying text.
\item \textsuperscript{92} The rehabilitation-retribution distinction also signifies the core values of the juvenile system. Because juvenile courts are charged with the duty to fix children rather than to punish them for particular misdeeds, the focal point of the court's investigation should be the child's needs rather than the character of her misdeeds. See supra notes 26, 29-31 and accompanying text.
\item \textsuperscript{93} The Court has constitutionalized juvenile court procedures related to more adversarial facets of the fact-finding process (juveniles' rights to protection from coerced confessions; procedural due process in certification hearings; notice, counsel, and confrontation on cross-examination; and protection from self-incrimination) as well as those relating to commitment, such as the requirement of proof beyond a reasonable doubt and the prohibition of double jeopardy sentences. See supra note 40 and accompanying text.
\item \textsuperscript{94} See discussion supra note 39 and accompanying text. In fact, members of the Court have cited the difference between nonproportional indeterminate sentences and traditional punishment as a reason for upholding the system. See McKeeiver v. Pennsylvania, 403 U.S. 528, 551-53 (1971) (White, J., concurring) ("A typical disposition in the juvenile court ... may authorize confinement until age 21, but it will last no longer and within that period will last only so long as his behavior demonstrates that he remains an unacceptable risk if returned to his family.")
\end{itemize}
posing nonproportional indeterminate dispositions is to maximize rehabilitation, juveniles' rights under the Due Process, Equal Protection, and Cruel and Unusual Punishment Clauses are not implicated unless state action begins to resemble the punitive adult model.

95. Because due process rights are implicated only by the loss of "life, liberty, or property," U.S. CONST. amend. XIV, § 1, they are distinguishable from the juvenile offender's interest, as interpreted by parens patriae, in being rehabilitated. The tension between the due process and rehabilitation interests was addressed by the Court in Gault. In re Gault, 387 U.S. 1 (1967). On the one hand, delinquency dispositions "[do] not deprive the child of any rights, because he has none. [They] merely provide[] the 'custody' to which the child is entitled." Id. at 17 (citations omitted). On the other hand, "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court." Id. at 27-28. The system created by Gault and its progeny constitutionalizes proceedings most implicated by the due process clause, see supra note 39, but not individualized dispositions at the core of the rehabilitative model. The system itself is founded on individual analyses of children's needs even though certain procedural and sentencing facets mirror adult criminal procedure. See supra notes 29, 39. The ultimate power to make duration a function of rehabilitation lies with the parens patriae philosophy in the juvenile courts, at least to the extent that such discretion is granted by the legislature. See supra notes 34-35 and accompanying text.

96. Equal protection analyses are founded on the belief that similarly situated people must receive equal protection from the government. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). It does not follow, however, that juveniles and adults are similarly situated. Justice Frankfurter recognized that "laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties .... The Constitution does not require things which are different .... to be treated in law as though they were the same." Tigner v. Texas, 310 U.S. 141, 147 (1940). Because juveniles have different liberty interests than adults, and because the state has a unique interest in forming rehabilitative dispositions, juvenile offenders are not similarly situated to their adult counterparts. See supra notes 30-35. The California Supreme Court reached this conclusion in In re Eric J., 601 P.2d 549, 552-54 (Cal. 1979). It stated:

[T]he state does not have the same purpose in sentencing adults to prison that it has in committing minors to the Youth Authority. Adults ... are sentenced to prison as punishment ... while minors adjudged wards of the juvenile courts are committed to the Youth Authority for the purposes of treatment and rehabilitation.

Id. at 553 (citations omitted).

97. The Cruel and Unusual Punishment Clause, see U.S. CONST. amend. VIII, is inapplicable to indeterminate sentencing for two reasons. First, juvenile court dispositions are not punishments; children may be waived into adult courts for adult consequences, see supra note 42 and accompanying text (describing waiver), but normal rehabilitative efforts are not punitive. Second, the Court uses community standards when qualifying whether a punishment is actually cruel and unusual. See Stanford v. Kentucky, 492 U.S. 361, 369-80 (1989). In Stanford, the Court held that it is not cruel and unusual to execute
The application of indeterminate sentences to children who are incurable may confine some of them to secured facilities for the duration of the juvenile justice system's jurisdiction, but even this effect does not defeat the state's interests in rehabilitation and public safety. Since rehabilitating juvenile sex offenders is a complicated and dynamic process that is analogous to rehabilitative civil commitment of adult sex offenders, courts should follow precedents established in those cases and uphold nonproportional indeterminate treatment of juvenile sex offenders.

The traditional judicial deference to rehabilitative programs and limitations on indeterminate sentencing is more commonly statutory than constitutional. Many states choose to apply determinate sentencing or to place limits on juvenile seventeen year-olds tried in adult courts, because there is no national consensus on the issue. See id. Therefore, indeterminate sentencing is likely to survive a challenge under the Eighth Amendment unless a court holds that it is both a punishment and contrary to national consensus on the issue.

If applied in conjunction with civil commitment statutes, see, e.g., MINN. STAT. § 253B.185 (1998 & Supp. 1999), such policies could constitute de facto life sentences for the rare juvenile offender who is inherently and untreated dangerously. The question would then become whether continually unsuccessful rehabilitative attempts would violate the cruel and unusual punishment clause of the Eighth Amendment. See supra note 97. This critique seems unsuccessful, given the courts' willingness to uphold existing indeterminate civil commitment statutes. See supra note 88.

See supra note 56.

See generally Kansas v. Hendricks, 521 U.S. 346 (1997). The statute challenged in Hendricks allowed the state to civilly commit sex offenders at the completion of their criminal sentences. See id. at 350-53. The Court upheld the state's civil commitment statute because it was neither punitive nor designed generally to deter crime. See id. at 360-64. Rejecting the argument that indeterminate confinement is punitive in nature, Justice Thomas wrote "far from any punitive objective, the confinement's duration is instead linked to the stated purposes of the commitment, namely, to hold the person until his mental abnormality no longer causes him to be a threat to others." Id. at 363.

This Note does not advocate the indeterminate civil commitment of all juvenile sex offenders, but it does acknowledge that, in a small percentage of cases, children will not respond to treatment. See supra note 57. There are three reasons to allow such confinement: first, these children will continue to pose a threat until their rehabilitation is successful, see supra notes 87-88 and accompanying text; second, the likelihood of rehabilitation will only improve with advances in treatment methods, see supra note 56; and third, by the time they are outside the scope of the juvenile system their continued treatment will better serve the goals of the juvenile system if it is continued by the adult system than if the government releases unrehabilitated offenders into an unprepared citizenry. See NPPA GUIDES FOR JUVENILE COURT JUDGES, supra note 31, at 69.

See, e.g., supra notes 3 and 6.
court judges’ discretion statutorily.\textsuperscript{103} Thus, if Mary and Nathan are released before the system deems them rehabilitated, it will be because the duration of their confinement is limited by state statute.

In order to justify the use of indeterminate sentencing, rehabilitation must be effective. If the juvenile justice system cannot effectively treat the young offender so as to warrant release, indeterminate sentencing will be punitive rather than rehabilitative. A further complication is that rehabilitation is impossible to prove. The uncertainty of successful treatment may result in the permanent commitment of every offender.\textsuperscript{104} However, an appropriate rehabilitative standard may be found by utilizing the treatment goals of the juvenile justice system\textsuperscript{105} and predicating release on both objective manifestations of rehabilitation and the likelihood of recidivism. Evidence of the former may be inferred from individual treatment results, while the latter can be extrapolated from recidivism rates within the aggregate juvenile sex offender population. If treatment programs for juvenile offenders continue to improve,\textsuperscript{106} the ability to treat offenders and predict recidivism will lead to shorter sentences. If the efficacy of treatment strategies levels off, relatively long dispositions will continue to characterize indeterminate sentencing.\textsuperscript{107} In either case, focusing on individuals rather than offenses throughout the treatment process, and monitoring the success rates of ostensibly rehabilitated offenders, will allow states to analyze their progress and adjust law-enforcement tactics\textsuperscript{108} and treatment strategies accordingly.

\textsuperscript{103} \textit{See supra} note 34.
\textsuperscript{104} \textit{Cf. supra} note 98 and accompanying text.
\textsuperscript{105} These goals are the protection of the community and the rehabilitation of the juvenile offender. \textit{See NPPA GUIDES FOR JUVENILE COURT JUDGES, supra} note 31, at 69.
\textsuperscript{106} \textit{See supra} note 56.
\textsuperscript{107} This refers to the states’ interest in balancing rehabilitation and public safety. \textit{See NPPA GUIDES FOR JUVENILE COURT JUDGES, supra} note 31, at 69. If rehabilitation is impossible, the balance shifts in favor of public safety; at that point, incapacitation may be the only viable consequence for juvenile offenders.
\textsuperscript{108} If trends appear in the recidivism of registered sex offenders, police will be able to adjust law enforcement and public education strategies accordingly. For instance, if meta-analyses of treatment strategies reveal that juveniles with certain habits of offenses are more likely to re-offend, law enforcement may be able to improve their protection of at-risk groups, or more quickly compile lists of suspects from registered sex offenders.
Finally, in order for indeterminate sentencing to be applied under notification statutes, it must also be a good policy decision. It is illogical to implement a dispositional model if it is legal and feasible but completely antithetical to the public safety and rehabilitative goals. Indeterminate sentencing will maximize the state's interest in protecting public safety because it will prevent obviously dangerous offenders from being released merely because their term has run. Conversely, it will maximize the state's interest in rehabilitatıng youthful offenders because it will predicate their release on the effectiveness of their treatment rather than on an arbitrary limit that may come long before—or after—these children are actually ready to rejoin society. Some legislators may be reluctant to confer such discretion upon juvenile courts, lest they be perceived as insufficiently tough on crime, but these political hurdles to good public policy should be recognized and overcome.

Because indeterminate sentencing can be enacted legally, may be implemented feasibly, and ultimately serves the state's interest in public safety and the rehabilitation of youthful offenders, it is a fundamental step toward the proper application of Megan's Law statutes to juvenile sex offenders. If Nathan and Mary are released from treatment before they are rehabilitated, they pose a risk to their communities and may never become fully functional members of society. Such a risk may warrant community notification. If they are released only after successful treatment, however, neither their interests nor society's are furthered by notifying the community of their prior sex offenses. By ensuring rehabilitation through indeterminate sentences, and by implementing notification statutes in accordance with the rehabilitative ideal, states will decrease the need for Megan's Law while maintaining the primary goals of the juvenile justice system.

B. COMMUNITY NOTIFICATION FOR JUVENILE OFFENDERS SHOULD BE INCORPORATED INTO THE JUVENILE JUSTICE SYSTEM

As currently implemented, the nexus between Megan's Law statutes and juvenile justice systems ranges from nonexistent to inadequately founded on the system's policy goals. On the one hand, most states do not use registration and notification statutes to address the risks juvenile sex offenders pose to
public safety. On the other hand, the states that apply Megan's Law statutes to juveniles do not do so according to the rehabilitative ideal. First, the statutes are not part of the juvenile systems, and they are not implemented by agents of those systems. Second, the statutes are generally not implemented using evaluative criteria that is appropriate for children. Third, these statutes do not weigh the stigmatizing effects of community notification against the jurisdiction's rehabilitative efforts on behalf of young offenders. Finally, community notification in adult systems is not narrowly tailored to the treatment needs of the released juvenile offender.

The Minnesota and New York statutes are good examples of how states fail to reconcile Megan's Law with the rehabilitative ideal. The Minnesota statute allows an "end-of-confinement review committee" to determine the appropriate level of notification for young sex offenders deemed rehabilitated by the juvenile system. The New York legislature, however, explicitly excludes juveniles from the scope of its registration and notification statutes, allowing unrehabilitated youth to finish determinate sentences and silently reenter their communities. Megan's Law statutes may be intended to serve as some sort of check on juvenile court dispositions, but since they cannot fix unreasonably long sentences, the only balance they can provide is by requiring registration and notification. This ostensive balance does not serve rehabilitative purposes, particularly because the model does not use evaluative criteria relevant to young offenders.

The first flaw in the application of adult community notification statutes to juvenile offenders is that the state actors who release a child are not involved in the treatment efforts of the young offender, and they have no control over who will be informed about the child's presence and history upon release. Whereas agents of the juvenile justice system can decide that a child has been sufficiently rehabilitated to rejoin their commu-

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110. See notes 48-50 and accompanying text (describing the risks juvenile sex offenders pose to public safety).
111. See, e.g., supra notes 9-12, 67.
112. See supra note 10.
113. See supra notes 10, 12 and accompanying text.
114. See supra note 16 and accompanying text.
115. Because the notification statute is applied by agents of the adult system, the juvenile justice system that treated the youth offender will not be able to influence the scope of notification. See supra notes 12, 67.
nity, an agent of the adult community notification board can undermine that decision by determining that the child's propensity to re-offend is so dangerous that her entire neighborhood and school must be notified of her sex offenses. Although the juvenile board is astute in assessing juvenile conduct, the adult board's expertise relates to the risk posed by adult offenders. The administrators of general notification statutes are accustomed to assessing adults because the majority of the sex offender population is comprised of adults, but precursors to adult recidivism may not be useful or appropriate when predicting recidivism among juvenile offenders. States can therefore best serve the rehabilitative ideal and the safety of the public by having juvenile justice experts make individualized assessments of the need for community notification.

The second consideration in the application of Megan's Law to juveniles is that the criteria used for determining the type of community notification should be specifically tailored to the characteristics of youthful offenders. Although some of the factors in estimating recidivism appear applicable to juveniles, others are irrelevant to young offenders or require

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116. See supra notes 10, 67.
117. See supra notes 12, 67.
118. See supra note 10.
119. Even if that population is proportionately smaller than the adult population as a whole, the vast majority of sex offenders are still adults. Cf. supra notes 48-50 and accompanying text.
120. See infra notes 121-24 and accompanying text.
121. For instance, the Minnesota statute examines the seriousness of the offense if the offender should re-offend, the offender's prior offense history, the offender's characteristics, and whether there is credible evidence in the record that indicates that the offender will re-offend if released into the community. See MINN. STAT. § 244.052 subd. 3(g) (1998 & Supp. 1999). These are broad categories, but they may be a useful starting point in analyzing youthful offenders.
122. The Minnesota statute, for example, asks "whether the offender demonstrates a physical condition that minimizes the risk of reoffense, including but not limited to, advanced age . . . ." Id. § 244.052 subd. (3)(g)(6). Moreover, the mere fact that the statute considers "the availability of community supports to the offender," id. § 244.052 subd. 4, "the . . . likelihood that the offender will be involved in therapeutic treatment[,]" id. § 244.052 subd. 3(g)(4)(i), and "the availability of . . . a stable and supervised living arrangement in an appropriate location[,]" id. § 244.052 subd. 3(g)(4)(ii), ignores the statutory requirement of treatment and supervised living for juvenile sex offenders. See supra note 3. Because at-risk juveniles must always be the subject of rehabilitative efforts and therapeutic treatment, and a stable living environment is a consideration of any juvenile court disposition, these factors are
different benchmarks for analysis.\textsuperscript{123} For instance, the assessment process could consider whether the juvenile offended at school or at home; whether the child appreciated the significance of her conduct at the time of the offense; how the child has developed emotionally and intellectually contemporaneously with her treatment; or the extent to which the juvenile's family will monitor her reintegration and support her after-care.\textsuperscript{124} Ultimately, in a rehabilitative model, the individualized needs of the children will supersede general characteristics of adult offenders. If members of Mary's community are to be notified about her prior offense, it should be because she presents a genuine risk to public safety, not because the board has failed to take into account the stages of childhood psychological development.

irrelevant to the disposition of juvenile offenders. Finally, if “the offender's lack of education or employment stability[,]” MINN. STAT. § 244.052 subd. 3(g)(4)(iv), affects their evaluation under this statute, they may actually have an Equal Protection claim against the statute's application.

123. For instance, when construing the offender’s prior offense history, the Minnesota board is to consider both the duration of the offender’s prior offense history and the length of time since the offender’s last prior offense. See MINN. STAT. § 244.052 subd. 3(g)(2)(iii)-(iv). Time is much more relative with a young child than an adult; what may appear short in absolute time can be significant as a proportion of life or in stages of emotional development. When the board “construes the offender's prior history of other antisocial acts[,]” id. § 244.052 subd. 3(g)(2)(v), it should be able to distinguish between what constitutes antisocial behavior for adults, and what constitutes antisocial behavior for children.

124. It is outside the scope of this Note to formulate an exhaustive list of specific factors, but it seems evident that they could be determined through a process similar to one which created factors for evaluating adult offenders, or by adopting tools from child psychology and psychiatry. The authors of Practice Parameters suggest a system in which a clinical psychiatrist conducts an interview with the offender to qualify her likelihood of recidivism and need for treatment. See Practice Parameters, supra note 56, at 65S. The clinician would evaluate the juvenile offender's sexual history; developmental and psychosocial history; legal history, including non-sexual violent crimes against animals; medical and psychiatric history, including sexually transmitted diseases and psychopathology; school and academic history; and a mental status examination that assesses the presence of personality and organic disorders, substance abuse, and risk of self-harm. See id. The mental status examination may be particularly appropriate in circumstances where a juvenile may be released to some level of community notification, because it assesses “[a]pprehension by judicial authority and the associated shame of exposure, embarrassment, stigmatization, fear of punishment, and incarceration [which] are risk factors for suicidal behavior.” Id. at 65S-66S. Because the interview is conducted by psychiatrists rather than administrators, they are better able to assess the different stages of psychological development, and the different risks posed by preadolescents and adolescents. See supra note 56 and accompanying text.
The third consideration is the need to weigh the impact of the notification process itself against the juvenile offender’s rehabilitation. Confidentiality and reducing the threat of unnecessary stigmatization should be paramount in every juvenile court decision. Indeterminate sentencing and sensitivity to the effects of notification statutes would make it possible for evaluators to decide whether a child’s interests are better served by indeterminate confinement or by release to an inhospitable community. For instance, both the Minnesota and New York statutes provide for widespread public dissemination of information about certain types of sex offenders. This is inappropriate for juvenile offenders. Because the juvenile justice system is founded on the rehabilitative ideal and should be implemented with indeterminate sentencing, no child should be released if she represents such a public risk that widespread community notification is necessary. Even with the uncertainties inherent in rehabilitating sex offenders, a juvenile who is assessed to be the highest risk to her community should not be released if indeterminate dispositions could otherwise improve treatment and protect public safety. The implementation of a notification statute would undermine the juvenile justice system's emphasis on confidentiality and avoidance of stigma that characterize the rehabilitative ideal. If community notification is constructed to serve the goals of the juvenile justice system, incapacitation should outweigh current policy that arbitrarily favors either rehabilitation or public safety to the detriment of the other.

The final consideration is that the scope of community notification should be tailored to juvenile offenders. If notification is a function of rehabilitation, it should be limited to the state actors who will protect the interests of the juvenile: law enforcement agents, teachers, psychologists, and legal guardians. Parties notified of the presence and predilections of par-
ticular juvenile offenders must respect the confidentiality of such information.\textsuperscript{130} Although any type of notification may incidentally lead to collateral breaches in data privacy, individualized notification—and sanctions for breach of confidentiality\textsuperscript{131}—can protect the balance of public safety and rehabilitation.

States will be able to maximize their interests in rehabilitating children and protecting potential victims by combining registration and notification statutes with indeterminate sentencing. Additionally, states should require an evaluation process conducted by juvenile justice experts using criteria and strategies that are appropriate for juvenile offenders. Children will not be released unless their rehabilitation appears likely, and only a select group of specialists will be notified of their prior sex offenses, resulting in a greater likelihood of their rehabilitation. Because fewer unrehabilitated children will be released, communities will be safer.

CONCLUSION

The application of Megan's Law statutes to juvenile sex offenders demands attention because it represents a nexus of the state's interests in public safety and the rehabilitation of juvenile offenders. The states have invested a century of time and resources in developing a system capable of curing children's social ills. States have also attempted to protect their communities from the unique threats that young offenders pose. Through proper implementation, registration statutes can strengthen the rehabilitative efforts of the juvenile justice system. Community notification statutes may provide information primarily serve individuals likely to be victimized by the offender." \textit{See id.}

The difficulty in implementing a notification statute like this is in finding a balance between notifying enough people to protect public safety and doing it in such a way as to avoid unnecessary disclosures and stigmatization. Disclosure is warranted because of the risk juvenile offenders pose, particularly to other children. \textit{See supra} notes 48-50 and accompanying text. By extending disclosure to non-supervisory state actors, Minnesota increases the risk of overly broad disclosure. If correctly implemented and rigorously enforced, Minnesota's Level II notification may be a viable alternative for states that want to place a greater emphasis on public safety.

\textsuperscript{130} Although the Minnesota statute protects the confidentiality of this information, \textit{see} MINN. STAT. § 243.166 subd. 7 (1998), New York laws would have to be modified if applied to minors. \textit{See supra} note 67.

\textsuperscript{131} \textit{See supra} note 19.
to state agents without undermining the rehabilitation of released offenders.

Registration and notification statutes have the potential to become punitive weapons that undermine the rehabilitative goals of the juvenile system. If applied correctly, however, such statutes may serve the states' interests by protecting public safety and rehabilitating young offenders. To do so effectively, states must implement nonproportional indeterminate dispositions that provide individualized treatment models with durations relevant to the juvenile offender's treatment needs. Second, registration and notification statutes should be implemented by agents of the juvenile justice system who will consider the effects of community notification on the offender's rehabilitative needs. When applied, notification should be limited to the extent necessary to nurture juveniles' rehabilitation and to protect public safety. It will be a challenge for legislatures and courts to look past punitive sound bites and propose progressive solutions. The ultimate result of this experiment will transcend the false dichotomy and benefit our children and our communities.